

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose if initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I (a) PLAINTIFFS**

3M COMPANY.

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**

(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

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*Attorney for Plaintiff, 3M Company*

**DEFENDANTS**

TECNICAM, S.R.L a/k/a CAM, TECNICAM, INC., and CAMPAK, INC.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT ESSEX  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE FOR DEFENDANT)  
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business in This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business in Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 362 Personal Injury – Med Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 442 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (139ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Tile XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Arts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 520 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
Transferred from ☐ 5 another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
Appeal to District ☐ 7 Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

Brief description of cause: Breach of Contract by Defendants TECNICAM, S.R.L a/k/a CAM, TECNICAM, INC., and CAMPAK, INC.

**VII. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A  
☐ UNDER F.R.C.P. 23

CLASS ACTION

DEMAND \$ 157,426

Check YES only if demanded in complaint:

JURY DEMAND ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE April 8, 2020

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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3M COMPANY  
3M Center  
St. Paul, Minnesota, 55144

Plaintiff,

v.

TECNICAM, S.R.L a/k/a CAM  
119 Naylor Avenue  
Livingston, NJ 07309

and

TECNICAM, INC.  
119 Naylor Avenue  
Livingston, NJ 07309

and

CAMPAK, INC.  
119 Naylor Avenue  
Livingston, NJ 07309

Defendants.

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**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**Case No.:**

**PLAINTIFF'S COMPLAINT**

Plaintiff, 3M Company. ("3M") brings this Complaint against Tecnicam, S.r.l./CAM, Tecnicam, Inc., and Campak, Inc. (collectively "Defendants"), stating as follows:

**PARTIES**

1. 3M is a Delaware corporation, with principal place of business in St. Paul, Minnesota.

2. Tecnicam, S.r.l., a/k/a CAM, (“CAM”) is a multi-national business entity engaged in the business of designing and manufacturing automatic packaging machines with offices located at 119 Naylon Avenue, Livingston, New Jersey 07039.

3. Tecnicam, Inc. (“Tecnicam”) is a corporation organized and existing under New Jersey law, which regularly conducts business in New Jersey with a registered agent and office located at 119 Naylon Avenue, Livingston, New Jersey 07039.

4. Campak, Inc. (“Campak”) is a corporation organized and existing under New Jersey law, which regularly conducts business in New Jersey with a registered agent and office located at 119 Naylon Avenue, Livingston, New Jersey 07039.

5. Tecnicam, S.r.l./CAM, Tecnicam, Inc. and Campak, Inc. are referred to herein collectively as the “Defendants.”

### **JURISDICTION AND VENUE**

6. Federal jurisdiction exists pursuant to 28 U.S.C. §1332, because there is complete diversity of citizenship between Plaintiff and Defendants, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. Venue is proper in the District of New Jersey because a substantial part of the events or omissions on which the claims are based occurred in the District of New Jersey.

### **FACTS**

8. On June 30, 2017, 3M placed a Purchase Order with Campak Sales Manager, Brian Oliver, at Defendants’ office located in Livingston, New Jersey, for custom built, specialized packaging equipment consisting of a CAM Model RT Overwrapper and SMA80 Case Packer (collectively “Equipment”). The proposed cost of the Equipment was \$524,752.

9. On August 16, 2017, 3M suspended the June 2017 Purchase Order due to capital spending constraints.

10. In mid-December, Defendants informed 3M that due to price increases they would have to re-quote the cost of the Equipment. Defendants submitted a revised quote for the Equipment. (12/14/2017 Letter and Revised Budgetary Quote from Brian Oliver to George Louis, attached hereto as **Exhibit A**).

11. Upon acceptance of the revised quote and agreed upon delivery date of October 2018, 3M released the Purchase Order for the Equipment to Defendants and provided Defendants with a down-payment of \$157,426 on the Equipment.

12. 3M's Purchase Order Terms specifically stated that "TIME IS OF THE ESSENCE FOR ALL ORDERS." (3M Purchase Order Terms, attached hereto as **Exhibit B**, Section 2). The Purchase Order Terms further stated that

"[i]f Seller fails to comply with all of an Order's Terms or admits its inability to meet its financial obligations, or **it otherwise becomes apparent that Seller will not be able to fulfill its obligations under that Order due to Unavoidable Delay or other cause**, then 3M may cancel an Order at any time by electronic or written notice to Seller without any liability of any kind to Seller, in addition to any other legal or equitable remedies 3M may have. *Id.*, Section 4.2 (emphasis added).

13. Following submission of the Purchase Order, 3M requested a "kick-off" meeting with Defendants to review the Equipment design and discuss the project schedule.

14. On February 6, 2018, Defendants provided 3M with a generic layout for the Equipment and, even though Defendants requested clarification from 3M on the Equipment specifications, Defendants did not schedule any meeting with 3M.

15. Eventually, a "kick-off" meeting with Defendants was scheduled for February 21, 2018. Margherita Vittuari, Defendants' Project Manager in Italy, was scheduled to attend via

Skype. On the day of the scheduled conference, Ms. Vittuari contended she was unable to connect with the conference call and consequently did not attend. Thus, 3M was unable to obtain any significant information and the meeting failed to advance the project.

16. Subsequent attempts by 3M between February 2018 and May 2018 to schedule a “kick-off” meeting or otherwise meet with Ms. Vittuari to review the Equipment design also failed. Despite 3M’s repeated requests, Defendants never provided 3M with any mechanical design drawings or a schedule for completion of the Equipment.

17. In late May 2018, 3M again attempted a meeting with Defendants, this time by cell phone, in accord with Defendants’ request. Again, Ms. Vittuari, did not appear at the meeting, nor did Defendants provide 3M with the requested design drawings for the Equipment.

18. In early July 2018, although Defendants submitted electrical drawings to 3M, full mechanical drawings and a schedule for completion were not provided.

19. By mid-October 2018, the expected month of delivery, 3M had yet to be provided with the mechanical specifications for the Equipment or any schedule for its completion, despite 3M’s repeated attempts to communicate with Defendants regarding their progress.

20. Due to Defendants’ persistent failure to communicate with 3M regarding the most basic information on the project’s progress, on October 16, 2018, 3M notified Defendants in writing that it intended to cancel the order for cause on October 26, 2018, and request a full refund of all monies paid to Defendants, unless Defendants provided 3M with updated drawings of the Equipment and video of the Equipment in its current state, by October 23, 2018.

21. On October 16, 2018, Defendants confirmed receipt of the cancellation notice and informed 3M that the new Project Manager, Antonio Ippolito, who had replaced Ms. Vittuari, had been contacted regarding the issues with the project.

22. On October 17, 2018, 3M again notified Defendants of its intention to cancel the project for lack of progress and request a full refund, if Defendants failed to provide photo and video evidence of the Equipment in a near completed state by October 23, 2018.

23. A teleconference between 3M and Defendants, including Mr. Ippolito, was conducted on October 24, 2018. During the meeting, Defendants agreed to provide 3M with an updated layout and a video detailing the design and operation of the Equipment. Defendants further agreed to provide regular updates via e-mail, as well as to conduct weekly meetings with 3M to discuss the Equipment status and prevent further delays.

24. Defendants thereafter provided 3M with a video simulation of the Equipment, rather than an actual video of the Equipment in operation, as requested. In early November 2018, 3M requested that its engineers be permitted to visit Defendants' facility in Italy to view the Equipment. Although Defendants acknowledged 3M's request for an on-site visit, 3M never received approval for the visit and was unable to confirm the state of the Equipment's completion.

25. A teleconference between 3M and Defendants held mid-December 2018 actually revealed that no progress had been made on the Equipment since the October 2018 meeting and that Defendants would not be able to deliver the Equipment until March 2019.

26. In late January 2019, Defendants notified 3M of yet another delay, informing 3M that it would not be able to deliver the Equipment until July 2019.

27. On February 26, 2019, 3M sent Defendants a Notice canceling the Purchase Order for cause, "for failure to make progress or deliver" the Equipment. 3M additionally requested a full refund of the \$157,426 down-payment by no later than March 29, 2019.

28. To date, Defendants have failed to refund 3M's down-payment of \$157,426.

29. 3M has given Defendants fair notice of its cancellation for cause based on Defendants breach of the terms of the Purchase Order by failing to timely deliver the Equipment.

30. 3M has suffered harm as a result of Defendants' failure to deliver the Equipment in a timely manner, including but not limited to its down-payment paid to Defendants in the amount of \$157,426.

### **COUNT I – BREACH OF CONTRACT**

31. Plaintiff 3M incorporates by reference the allegations set forth in paragraphs 1 to 30.

32. Defendants breached the terms of the Purchase Order by failing to timely deliver the Equipment to 3M and/or by making it apparent that they were otherwise unable to fulfill their obligations due to unavoidable delay.

33. As discussed above, Defendants repeatedly failed to communicate with 3M regarding their progress or otherwise move the project forward. Because the Equipment is specialized, custom designed machinery, Defendants' interaction and communication with 3M was vital to advance the project to completion in a timely manner. Defendants' repeated delays and subsequent failure to deliver the Equipment in a timely manner is a clear breach of the Purchase Order Terms which specifically state that "TIME IS OF THE ESSENCE FOR ALL ORDERS." *See* Exhibit B.

34. Defendants' breach entitles 3M to a full return of the \$157,426 paid to Defendants as a down-payment for the Equipment.

35. As a direct result of the breach alleged herein, 3M has suffered monetary damages, including but not limited to, the down-payment of \$157,426.

WHEREFORE, Plaintiff 3M demands judgment against Defendants on Count I for the sum certain of \$157,426, together with interest, costs of suit and such other relief as the Court deems just and proper.

**COUNT II – BREACH OF IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING**

36. Plaintiff 3M incorporates by reference the allegations set forth in paragraphs 1 to 35.

37. Defendants breached the implied covenant of good faith and fair dealing under the Purchase Order by failing to provide the Equipment in accordance with the terms and conditions of the Purchase Order.

38. Defendants breached the implied covenant of good faith and fair dealing because they failed to timely deliver the Equipment and/or by making it apparent that they were otherwise unable to fulfill their obligations due to unavoidable delay.

39. As a direct result of Defendants' breach of the implied covenant of good faith and fair dealing, 3M has suffered monetary damages, including but not limited to, the down-payment of \$157,426.

WHEREFORE, Plaintiff 3M demands judgment against Defendants on Count II for the sum certain of \$157,426, together with interest, costs of suit and such other relief as the Court deems just.

**COUNT III – UNJUST ENRICHMENT**

40. Plaintiff 3M incorporates by reference the allegations set forth in paragraphs 1 to 39.

41. In reliance on Defendants' conduct and representations, including the Purchase Order alleged herein, 3M conferred benefits on Defendants.



42. 3M conferred the benefits with a reasonable expectation that Defendants would timely provide 3M with the ordered Equipment.

43. 3M is entitled to disgorgement of the benefit and enrichment of the down-payment of \$157,426 that Defendants have unjustly received and retained.

WHEREFORE, Plaintiff 3M demands judgment against Defendants on Count III for value of benefits conferred, together with interest, costs of suit and such other relief as the Court deems just.

#### **COUNT IV – FRAUD**

44. Plaintiff 3M incorporates by reference the allegations set forth in paragraphs 1 to 43.

45. Defendants, either individually, jointly and/or severally, knowingly made material misrepresentations regarding the progress of the Equipment with the intent to deceive 3M.

46. At the time 3M placed the Purchase Order and provided the down-payment, it had no reason to know that Defendants had no intention of completing the Equipment by the agreed upon date and was otherwise reasonable in relying on information provided by Defendants.

47. As set forth above, Defendants intentionally and repeatedly misrepresented and/or concealed the status of the Equipment to 3M, despite knowing that the Equipment would not be completed by the agreed upon date of delivery.

48. Relying on the false information and misrepresentations made by Defendants, 3M was induced to provide Defendants with a significant down-payment of \$157,426.

49. 3M has suffered harm and damages, including but not limited to its down-payment of \$157,426, as a result of Defendants intentional misrepresentations regarding their ability to provide the Equipment in a timely manner.

